

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

DANIEL THOMASON SMITH	§	
VS.	§	CIVIL ACTION NO. 1:18cv619
UNITED STATE OF AMERICA	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Daniel Thomason Smith, an inmate confined within the Bureau of Prisons, proceeding *pro se*, filed the above-styled lawsuit under the Federal Tort Claims Act. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court.

The defendant has filed a motion to dismiss and a first amended motion to dismiss. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motions be granted and this case dismissed for lack of subject-matter jurisdiction.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed a motion for appointment of counsel (doc. no. 38). As that motion references the Report and Recommendation, the court liberally construes the filing as objections to the Report and Recommendation.


The court has conducted a *de novo* review of the objections. After careful consideration of plaintiff's filing, the court is of the opinion the objections are without merit. The magistrate judge correctly concluded that employees at the facility where plaintiff was incarcerated were independent contractors. As a result, the United States is not liable for their acts or omissions.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and the conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. The motion to dismiss and the first amended motion to

dismiss (doc. nos. 25 and 31) are **GRANTED**. To the extent plaintiff seeks appointed counsel, that request is **DENIED**. A final judgment shall be entered in accordance with the recommendation of the Magistrate Judge.

**SIGNED** this the **3** day of **January, 2022**.

  
Thad Heartfield  
United States District Judge